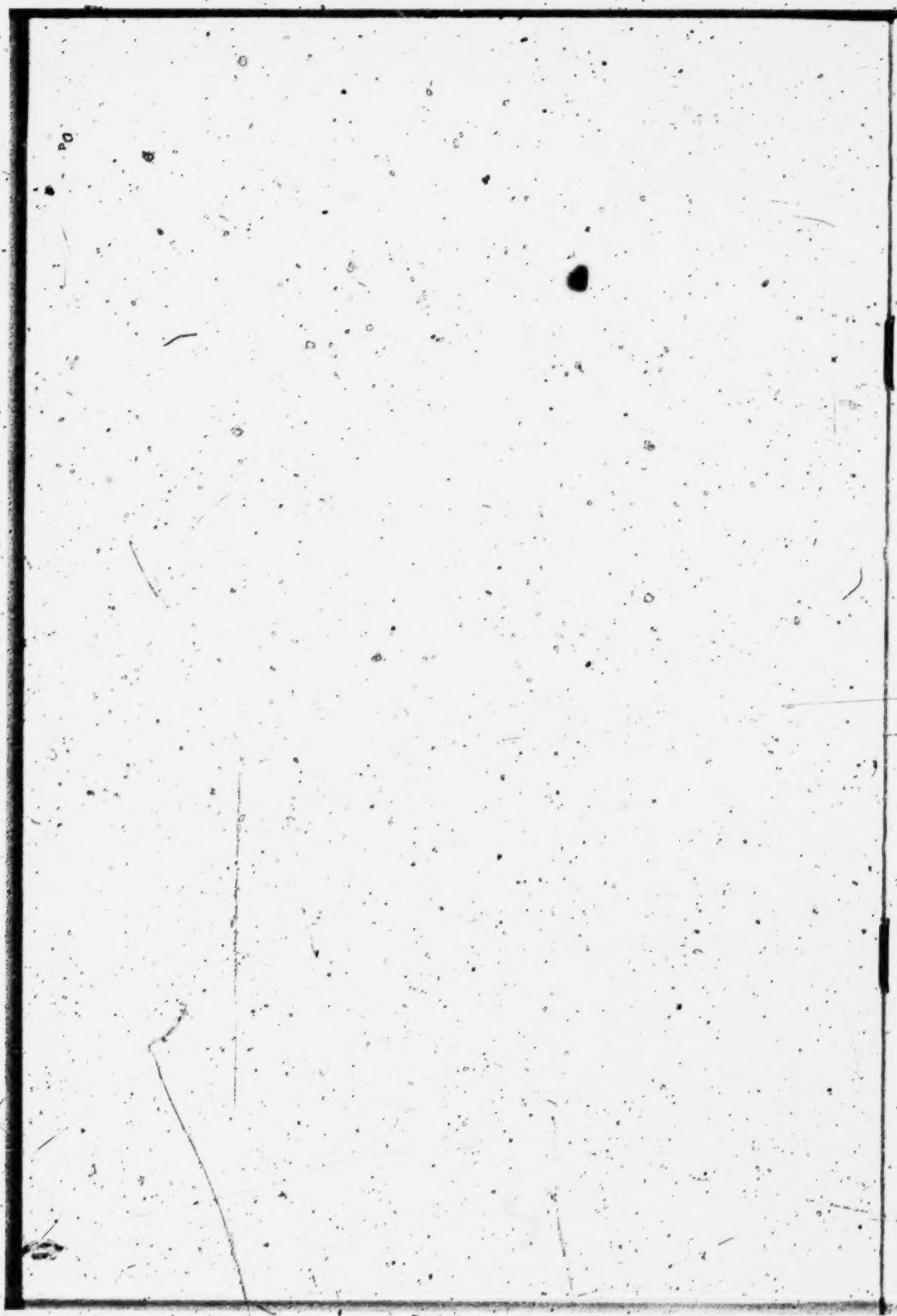

SUPREME COURT, U. S.

SEP 30 1967

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967.

No. 559

UNITED STATES EX REL., SAM DE STEFANO,
Petitioner,

vs.

JOSEPH I. WOODS, SHERIFF OF COOK COUNTY, ILLINOIS,
Respondent.

RESPONDENT'S OBJECTIONS TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES.

JOHN J. STAMOS,
State's Attorney of Cook County, Illinois,
2600 South California Avenue,
Chicago, Illinois 60608,
Attorney for Respondent.

ELMER C. KISSANE,
THOMAS A. HETT,
Assistant State's Attorneys,
Of Counsel.

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---

o the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Respondent respectfully urges that this Honorable ourt, in its wise discretion, deny the Petition for Writ Certiorari heretofore filed by the Petitioner, Sam De efano, wherein the judgment of the United States Court Appeals for the Seventh Circuit in *United States of merica ex rel. Sam De Stefano* v. *Joseph I. Woods, eriff of Cook County, Illinois,* No. 16070, is sought to reviewed.

REASONS RELIED ON FOR DENIAL OF THE WRIT.

I.

The Right to a Trial by Jury Does Not Attach to Direct Criminal Contempt Cases.

This Court has consistently held, in several recent discussions of the problem, that the right to trial by jury does not attach, as a matter of constitutional right, to contempt proceedings.

In *Shillitani* v. *United States,* 384 U. S. 364, this Court reaffirmed the long-standing rule that subjects of civil contempt proceedings (such proceedings being remedial in character) are not clothed with a constitutional right to trial by Jury.

In both *Green* v. *United States,* 356 U. S. 165, and *United States* v. *Barnett,* 376 U. S. 681, 692, this Court held that criminal contempt proceedings do not, as a matter of constitutional necessity, call into play the jury trial provisions of either Article III, § 2 of or the Sixth Amendment to the Constitution of the United States.

Finally, in *Cheff* v. *Schackenberg,* 384 U. S. 373, this holding, as applied to criminal contempt proceedings was reaffirmed.

The petitioner's contention that the Court in *Cheff* decided, on constitutional grounds, the issue of the right to trial by jury as a result, not of the gravity of the offense, but rather, gauged by the severity of possible sentence, is patently unfounded and unsupportable by the Court's very language in *Cheff*. The supervisory power of the Supreme Court over lower Federal Courts was employed rather than a rule based upon Constitutional requirements. (See, *Cheff* v. *Schackenberg,* 384 U. S. 373, 380.)

Relying on this very recent analysis of the question by this Court no reason can be seen to require issuance of the requested Writ of Certiorari.

Moreover, as here involved, a summary hearing requiring no evidence to be presented to a fact finder—the contempts being committed directly in the presence of the committing magistrate during the course of a jury trial where this petitioner was a defendant—would make the entire question a moot point.

Only a legal question was involved in the instant contempt proceeding. No question of fact could be presented to a jury for their consideration. Hence, when a criminal contempt is direct in nature, the right to trial by jury does not constitutionally nor practically arise.

The practical consideration discussed above, distinguishes this cause from the case now pending in this Court, *S. Edward Bloom* v. *The People of the State of Illinois,* October Term, 1966, No. 52. There the criminal contempt is indirect in nature, requiring an evidentiary hearing, but even in that circumstance, the right to trial by jury does not attach. (See, Brief for Respondent, Point I, *S. Edward Bloom* v. *People of the State of Illinois,* October Term, 1966, No. 52.)

For the above-stated reasons, as to the first question presented by Petitioner herein, this Court must refuse to issue the requested Writ of Certiorari.

II.

The Punishment Here Imposed — Three Concurrent One Year Sentences for Three Acts of Direct Criminal Contempt — Is Not Cruel and Unusual Punishment Prohibited by the Eighth Amendment to the Constitution of the United States.

As clearly announced in *Weems* v. *United States,* 217 U. S. 349, the question involved in Eighth Amendment problems, is not the utmost limit of possible penalty, but what in fact has been the penalty imposed.

There need be no extensive citation of examples of more extreme penalties than the one-year here imposed. In this case, the punishment certainly was lenient, *United States, ex. rel. De Stefano* v. *Woods,* CA 7th, 1967, No. 16070, July 6, 1967 (Appendix to Petition, App. 4-5); *People* v. *De Stefano,* 64 Ill. App. 2d 368 (1965), cert. denied 385 U. S. 989.

Alluding to petitioner's citation to *Weems* v. *United States,* 217 U. S. 349, found at page 14 of his Petition, such appears to be a classic example of oversight. The issue there was whether, for the offense of falsifying official records, a punishment of not less than 12 years painful labor (defined as something greater than hard labor), while bound in chains, followed upon release by perpetual surveillance (akin but even more restrictive than parole), and perpetual inability to vote, hold offices of trust or profit, act as guardian, administrator, etc., is cruel and unusual punishment. Without too much struggle with the question, the Court there said that such minimum punishment did offend a right sense of justice and was in violation of the Eighth Amendment. *Weems,* however, does set down certain guidelines and these all speak of minimum or actual penalties imposed—not the utmost maximum penalty possible—the Court does not deal with abstractions.

Clearly, the penalty here imposed does not offend a right sense of fairness; the punishment, as all reviewing courts thus far have said, was required by the nature of the offense; and in fact is lenient and not in any sense cruel and unusual.

Conclusion.

For the reasons set forth above the Respondent, Joseph I. Woods, Sheriff of Cook County, Illinois urges that this Honorable Court deny the Petition for Writ of Certiorari to review the decision of the Court of Appeals for the Seventh Circuit in *United States ex rel. De Stefano* v. *Woods,* No. 16070, July 7, 1967.

Respectfully submitted,

JOHN J. STAMOS,
State's Attorney of Cook County, Illinois,
Attorney for Respondent.

ELMER C. KISSANE,
THOMAS A. HETT,
Assistant State's Attorneys,
Of Counsel.